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(c) HMM shall consult with each of MSC and Maersk prior to the introduction of any new services, or prior to seeking cooperation with third party vessel provider(s) in any form (including slot sale and slot swap), in the FE-USWC Trade, with a view to exploring further cooperation with and integration into the services operated under FMC Agreement No. 012293 first. Should HMM fail to so consult, MSC and/or Maersk may terminate the slot exchange described in Article 5.1(a) for cause (such termination being without prejudice to the continuation of the slot charter arrangement described in Article 5.2 hereof). If further cooperation with Maersk and MSC cannot be agreed, HMM may cooperate with one or more third party vessel provider(s) (by way of direct sale or slot swap) in the FE-USWC Trade, but in such event it is understood that HMM shall take steps to ensure that its cooperation with other carrier(s) will not result in the exchange of confidential information between Maersk and MSC on the one hand and the other vessel provider(s) with which HMM is cooperating on the other hand, or in MSC or Maersk containers being moved on the vessels of carriers other than HMM (and vice-versa). Notwithstanding the failure to reach agreement between HMM and Maersk/MSC on further cooperation, if HMM enters into a cooperation with one or more other carriers, Maersk or MSC shall have the right to terminate the slot exchange described in Article 5.1(a) of this Agreement in its entirety for cause if HMM fails to ensure that 1) there will be no exchange of confidential information between Maersk and MSC on the one hand and the other vessel provider(s) with which HMM is cooperating on the other hand or that MSC or Maersk containers shall not move on the vessels of carriers other than HMM (or vice versa) and/or 2) there will be no material changes in HMM's services as in existence as of the Effective Date (as defined in Article 8). Any

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termination of the slot exchange shall be without prejudice to the continuation of the  
slot charter arrangement described in Article 5.2 hereof.

(d) HMM shall be entitled to introduce permanent changes to port rotations transit times or terminals (with the exception of the Pier 400 call on HMM's PS2 Service) on the services on which MSC and Maersk are allocated slots under this Article 5.1, provided that these are communicated to MSC and Maersk at least 30 days in advance. Where any such change would have a material adverse effect on the commercial benefits which would reasonably be expected to be gained by MSC or Maersk under the slot exchange, MSC or Maersk may terminate the slot exchange for cause. MSC and Maersk shall be entitled to make permanent changes to port rotations, transit times or terminals on the services on which HMM is allocated slots under this Article 5.1, provided these are communicated to HMM at least 30 days in advance. Where any such change would have a material adverse effect on the commercial benefits which would reasonably be expected to be gained by HMM under the slot exchange, HMM may terminate the slot exchange for cause. Termination of the slot exchange pursuant to this Article 5.1(d) shall be without prejudice to the continuation of the slot charter set forth in Article 5.2 hereof.

5.2 Slot Charter.

(a) In the FE-USEC Trade, Maersk and MSC shall charter to HMM, and HMM shall purchase from Maersk and MSC, slots for 3,800 TEUs per week on services operated by Maersk and MSC pursuant to FMC Agreement No. 012293, with such slots to be divided among such services as the Lines may agree from time to time. Slots shall be provided to HMM by Maersk and MSC in proportion to their respective slot allocations in the Trade.

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HMM enter into a cooperation with an alliance third party, MSC and/or Maersk may terminate this Agreement for cause, except that if the failure is for slots in the NE- USEC Trade, MSC and/or Maersk may terminate the slot charter for cause only for the NE-USEC Trade (such termination being without prejudice to the continuation of the remaining slot charter and slot exchange arrangements).

(g) Maersk and MSC shall be entitled to introduce permanent changes to port rotations, transit times or terminals on the services on which HMM is allocated slots under this Article 5.2, provided that these are communicated to HMM at least 30 days in advance. Where any such change would have a material adverse effect on the commercial benefits which would reasonably be expected to be gained by HMM under the slot charter, HMM may terminate this Agreement for cause.

5.3 Use of Slots by HMM.

Slots provided to HMM hereunder may not be sold by HMM by way of direct sale or slot swap to any third party vessel provider other than where MSC and Maersk so agree.

5.4 Terminals.

Each Line shall be responsible for payment of all terminal costs related to the handling and storage of its cargo and containers in accordance with its individual contracts with the terminal operators utilized by the Line(s) providing the vessels on which such cargo/containers are transported. Upon request of any Line, the Line or Lines providing the vessels in any service covered by this Agreement shall endeavor to facilitate discussions between the requesting Line and the terminal operator(s) utilized by the Line or Lines providing vessels.

(e) Each Line shall retain its separate identity and shall have fully separate and independent sales, pricing and marketing functions. This Agreement does not create and shall not be construed as creating any legal entity or joint liability under the law of any jurisdiction.

(f) No information which is commercially sensitive may be exchanged hereunder directly or indirectly between any of the Lines other than as strictly necessary for the proper functioning of the Agreement.

(g) The Lines are authorized to discuss and agree upon such general administrative matters and other terms and conditions concerning the implementation of this Agreement as may be necessary or convenient from time to time. Such implementing matters include procedures relating to decisions by a Party to add or omit a port of call, to blank a sailing, to drydock or upgrade a vessel; record-keeping; cargo acceptance, handling and stowage; responsibility for loss or damage; general average; salvage; insurances; the handling and resolution of claims and other liabilities (including liabilities to third parties arising out of the act, neglect or default of one or more Lines and liability for failure to provide space or load containers); indemnification; documentation and bills of lading; the acceptance of dangerous, break bulk and out-of-gauge cargoes, and force majeure. In the event of a conflict between this Agreement and any implementing agreement, this Agreement shall govern.

#### **ARTICLE 6: AGREEMENT ADMINISTRATION**

##### **6.1 Administration.**

This Agreement shall be administered by meetings and communications between representatives of the Lines. The Lines are authorized to enter into such agreements as



may be necessary or desirable for the implementation of this Agreement, such as working procedures and a charter party.

6.2 Delegation of Authority.

The following are authorized to subscribe to and file this Agreement and any accompanying materials and any subsequent modifications to this Agreement with the Federal Maritime Commission:

- (i) Any authorized officer of a Line; and
- (ii) Legal counsel for a Line or for the Agreement.

**ARTICLE 7: VOTING**

Except as otherwise provided herein, all decisions hereunder, including amendments to this Agreement, shall require unanimous agreement of the Lines.

**ARTICLE 8: DURATION AND TERMINATION OF AGREEMENT**

8.1 This Agreement shall become effective on the date it is effective under the U.S. Shipping Act of 1984, as amended, or such later date as may be agreed by the Parties in writing (the "Effective Date"), and shall continue until April 1, 2020. If any Line wishes to extend or expand the cooperation embodied herein, it shall indicate its interest and commence discussions to do so no later than six (6) months prior to April 1, 2020 (i.e., by no later than November 1, 2019).

8.2 HMM on the one hand or MSC and Maersk on the other hand may terminate this Agreement by giving 6 months' prior notice, save where the termination is for cause, in which case the notice period shall be 3 months. Notwithstanding this, the

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(as defined by the Lines from time to time). In addition, MSC and Maersk shall have the right to terminate this Agreement for cause in the event any competitor of the businesses of MSC or Maersk obtains sufficient control of HMM to influence its business decisions.

8.6 Notwithstanding Article 8.2, this Agreement may be terminated pursuant to the following provisions on three months' notice in writing to the other Parties:

(a) if a sub-charter Party of a vessel to HMM by either Maersk or MSC is terminated at any time during the term of this Agreement for fault of HMM, then Maersk or MSC (as the case may be) may terminate this Agreement;

(b) if, following the outbreak of war (whether declared or not) or hostilities or the imminence thereof, or riot, civil commotion, revolution or widespread terrorist activity, any Party, being of the reasonable opinion that the events will render the performance of the Agreement hazardous or wholly or substantially imperiled, it may propose to terminate the Agreement, which proposal shall become final after fifteen (15) days unless the Parties agree unanimously to modify the Agreement instead; and

(c) if, at any time during the term of this Agreement, there is a Change of Control of a Party, and another Party is of the opinion, arrived at in good faith, that such Change of Control is likely to materially prejudice the cohesion or viability of the Agreement, then that other Party may terminate this Agreement within six (6) months of becoming aware of the change of control of the affected Party. For the purposes of this Article 8.6(c), a "Change of Control" of a Party shall include (other than as presently exists): (i) the possession, direct or indirect, by any person or entity, of the power to direct or cause the direction of the management and policies of the Party or its parent, whether by the ownership and rights of voting shares, by contract or otherwise; or (ii) the ownership by the Party's parent of 50% or less of the equity interest or voting power in such Party, save that the transfer of any shares in a Party or its direct or indirect parent between close members of the same family or between affiliates shall not constitute a Change of Control.

8.7 A Party may give notice to the other Parties terminating this Agreement with immediate effect if, at any time during the term of this Agreement, any other Party (the affected Party):

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- (a) is dissolved;
- (b) becomes insolvent or unable to pay its debts as they fall due;
- (c) makes a general assignment, arrangement or composition with, or for the benefit of its creditors;
- (d) has a winding-up order made against it or enters into liquidation whether voluntarily or compulsorily;
- (e) seeks or becomes the subject of the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets;
- (f) is affected by any event or act similar to or under which the applicable laws of the jurisdiction where it is constituted has an analogous effect to any of those specified in the sub-clauses (a) to (e) above; or
- g) takes any action in furtherance of any of the foregoing acts (other than for the purpose of the consolidation, reconstruction or amalgamation of the affected Party or as previously approved in writing by the other Parties).

8.8 Notwithstanding Article 8.2, a Party (the "terminating Party") may terminate this Agreement by giving not less than three months' notice in writing to the other Parties:

- (a) if another Party repeatedly fails to comply with Article 11 (Compliance) or commits a violation after notice of its failure to comply with Article 11 from another Party; or
- (b) if another Party commits a material breach of this Agreement where such breach has not been remedied to the reasonable satisfaction of the terminating Party within a reasonable period of time, after receipt by the defaulting Party of written notice from the terminating Party requiring such remedy; or
- (c) if another Party fails to pay any amount due to the terminating Party by the date of the deadline for payment, where such failure has not been remedied within 10 working days of receipt by the defaulting Party of written notice from the terminating Party requiring such remedy.



8.9 Maersk or MSC may terminate this Agreement for cause in the event notice of termination of FMC Agreement 012293 is given in accordance with the terms thereof.

8.107 Any termination of this Agreement shall be without prejudice to, and shall not affect any rights, remedies, obligations or liabilities of any Line that have accrued prior to the date of such termination.

8.118 The Federal Maritime Commission shall be notified of the termination of this Agreement.

**ARTICLE 9: APPLICABLE LAW AND DISPUTE RESOLUTION**

9.1 This Agreement is to be governed by and construed in accordance with English law. Any matter, claim or dispute arising out of or in connection with this Agreement, whether contractual or non-contractual, is to be governed by and determined in accordance with English law; provided, however, that nothing herein shall relieve the Lines of their obligation to comply with the U.S. Shipping Act of 1984, as amended.

9.2 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and

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procedures throughout their respective portions of the supply chain process, as described in the C-TPAT Agreement.

11.3 Each Party warrants that neither it nor any of its affiliates, directors, officers, employees or agents is identified on the U.S. Treasury Department's list of specially Designated Nationals and Blocked Persons (the SDN list), or the Swiss, European Union or other sanctions lists. The SDN list can be accessed via following link: <http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>.

11.4 Each Party covenants that none of its vessels is identified or otherwise targeted, or owned and/or operated, by any person identified or otherwise targeted by the sanctions laws. Each Party covenants that no interest in its cargo and/or containers carried on any Vessel of another Party is identified or otherwise targeted by the sanctions laws.

11.5 Each Party and the vessels it provides shall comply with the requirements of the ISM Code. Upon request, a Party shall provide a copy of the relevant Document of Compliance and Safety Management Certificate to any other Party.